

**REMARKS**

Claims 60-64, 66-76 were pending in this application.

Claims 77 and 78 have been newly added. Support for the new claims can be found, for example, at page 8, lines 12-16 and lines 21-32.

Applicants provide herewith evidence of the availability of the 9.3 antibody. Ms. Marie Harris of the Patent Department at the American Type Culture Collection (ATCC) has indicated that the hybridoma that produces the 9.3 antibody, namely ATCC HB-10271, is available for distribution (*see*, Appendix A). In addition, Ms. Tanya Nunnally, a Patent Specialist at the ATCC has indicated that the hybridoma that produces the 9.3 antibody (ATCC HB-10271) is in stock and available for shipment immediately (*see*, Appendix B). As the Examiner is aware, the 9.3 antibody has been described in several journal articles and patents (*e.g.*, USPN 5,521,288). For the foregoing reasons, Applicants respectfully assert that the 9.3 antibody is a biological material that is accessible, because it is known and readily available to the public.

Regarding antibody EX5.3D10, Applicants note that the hybridoma that produces this antibody is deposited at ATCC Deposit No. HB-11373. Pursuant to the requirements of 37 C.F.R. § 1.806, Applicants note that the deposit shall be made for a term of at least thirty years and at least five years after the most recent request for the furnishing of a sample of the deposit was received by the depository. Furthermore, pursuant to the requirements of 37 C.F.R. § 1.808(a)((2), Applicants note that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

**CONCLUSION**

Upon entry of the instant amendment, claims 60-64 and 66-78 will be pending in the instant application.

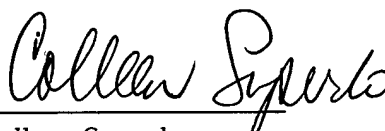
Applicants believe that all of the outstanding rejections of record have been overcome by amendment and/or argument. Accordingly, the claims are now believed to be in condition for allowance. Applicants respectfully request that the Examiner issue a timely Notice of Allowance.

No fees are believed to be due in connection with this correspondence. If any fees are due, please charge any payments due, or credit any overpayments, to our Deposit Account No. 08-0219.

The Examiner is invited to telephone the undersigned at the telephone number given below in order to expedite the prosecution of the instant application.

Respectfully submitted,

Dated: August 13, 2004

  
Colleen Superko  
Reg. No. 39,850

WILMER CUTLER PICKERING HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Tel.: (617) 526-6564  
Fax: (617) 526-5000

**APPENDIX A**

Copy of correspondence dated August 9, 2004, between Ms. Marie Harris of the American Type Culture Collection (ATCC) Patent Department and Joseph J. Koipally, Ph.D. of Wilmer Cutler Pickering Hale and Dorr LLP regarding the availability of ATCC deposit HB-10271.

## Koipally, Joseph

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**From:** Harris, Marie [Mharris@atcc.org]  
**Sent:** Monday, August 09, 2004 10:11 AM  
**To:** Koipally, Joseph  
**Subject:** RE: HB-10271

Hi Dr. Koipally,  
The price for HB-10271 is \$200 (plus shipping and handling). I believe that Customer Service at this point would request that you complete the Sales Order Form (which can be obtained from our website) and place the order online or by fax or phone. Is there any other information that you need before you place the order?

Sincerely,  
Marie

-----Original Message-----

From: Koipally, Joseph [mailto:Joseph.Koipally@wilmerhale.com]  
Sent: Monday, August 09, 2004 9:58 AM  
To: Harris, Marie  
Subject: RE: HB-10271

Dear Ms. Harris,

Thank you for your response.

I have contacted Customer Service to obtain quote and availability information for ATCC HB-10271 and I faxed a request on August 5, 2004 to (703)365-2750 but have yet to receive the requested information. I had asked that the quote and availability information be faxed to me at (617) 526-5000.

Your assistance in obtaining the requested information would be greatly appreciated.

Thank you for your time.

Sincerely,  
Joseph Koipally

-----Original Message-----

From: Harris, Marie [mailto:Mharris@atcc.org]  
Sent: Monday, August 09, 2004 9:54 AM  
To: Koipally, Joseph  
Subject: HB-10271

Dear Dr. Koipally,

Thank you for your inquiry. ATCC HB-10271 is available for distribution. It is not however listed on our website. The item was deposited for patent purposes and when we became aware of the issuance of a U.S. Patent we made it available for distribution. Only those items that have been authenticated by the ATCC are actually listed on our website catalog. You may contact our Customer Service Department and place an order (you may use our online shopping cart to place your order electronically or download the fax order form and fax it to 703-365-2750 or call 800-638-6597). There is no technical information on patent strains. You may want to look at the U.S. Patent which issued for this item (5,521,288 dated May 28, 1996).

Sincerely,  
Marie Harris

ATCC Patent Department  
mharris@atcc.org

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**APPENDIX B**

Copy of facsimile letter dated August 11, 2004 from Ms. Tanya Nunnally, Patent Specialist at the ATCC to Joseph J. Koipally, Ph.D., at Wilmer Cutler Pickering Hale and Dorr LLP indicating the commercial availability of the hybridoma producing the 9.3 antibody (ATCC Deposit No. HB-10271).

**AMERICAN TYPE CULTURE COLLECTION**

10801 University Boulevard  
Manassas, VA 20110-2209 USA  
Telephone: 703-365-2700

**FACSIMILE**

**Date:** August 11, 2004

**To:** Joseph J. Koipally, Ph.D.  
Wilmer Cutler Pickering Hale and Dorr LLP

**Fax Number:** 617-526-5000


**Total number of pages including this page:** 2

**From:** ATCC Patent Depository

**ATCC Patent Depository Fax Number:** 703-365-2745

**Reference:** Patent Deposit, ATCC No. HB-10271

Attached is the information you requested concerning the availability of the patent deposit, Hybridoma, 9.3 Assigned ATCC No. HB-10271. I am unable to provide you with a formal quote as an established ATCC account number is required for quotations. However, this document indicates the item is in stock and available for shipment immediately. If you need further assistance please contact me. Thank you.



Tanya Nunnally, Patent Specialist  
ATCC Patent Depository  
Tel.: 703-365-2721  
nunnally@atcc.org

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# ATCC

10801 University Boulevard  
Manassas, Virginia 20110-2209 USA

Telephone: (703) 365-2700  
Facsimile: (703) 365-2701  
Internet: <http://www.atcc.org/>



08/11/04

Effective Date: 08/11/04  
Currency: USD

List Price:	200.00	
Net Price:	200.00	E
Customer:	Profit Company	
Country:	USA	
Item Number:	HB-10271	
Part Desc:	Murine Hybridoma 9.3	

Discount: 0.0  
Extended Price: 200.00

Ctlg Comments:

Form: FZ  
BSL: 1  
Ship Date (if ordered today): 08/12/04

Mfg LT: 0  
Qty Avail: 9.0

**Affiliated Organizations:** American Association for Cancer Research, Inc.\* American Association of Immunologists\* American Institute of Biological Sciences\* American Phytopathological Society\* American Society for Biochemistry and Molecular Biology\* American Society for Cell Biology\* American Society for Microbiology\* American Society for Virology\* American Society of Agronomy\* American Society of Human Genetics\* American Society of Parasitologists\* American Society of Tropical Medicine and Hygiene\* Canadian Federation of Biological Societies\* Canadian Society of Microbiologists\* Genetics Society of America\* Infectious Diseases Society of America\* Mycological Society of America\* National Research Council\* National Academy of Sciences\* Pharmaceutical Research & Manufacturers of America (PhRMA)\* Society for Industrial Microbiology\* Society for Integrative & Comparative Biology\* Society for In Vitro Biology\* Society for Leukocyte Biology\* Society for Microbiology\* European Microbiology\* 1999 is a centennial year for the American Society for Microbiology.

TOTAL P.02